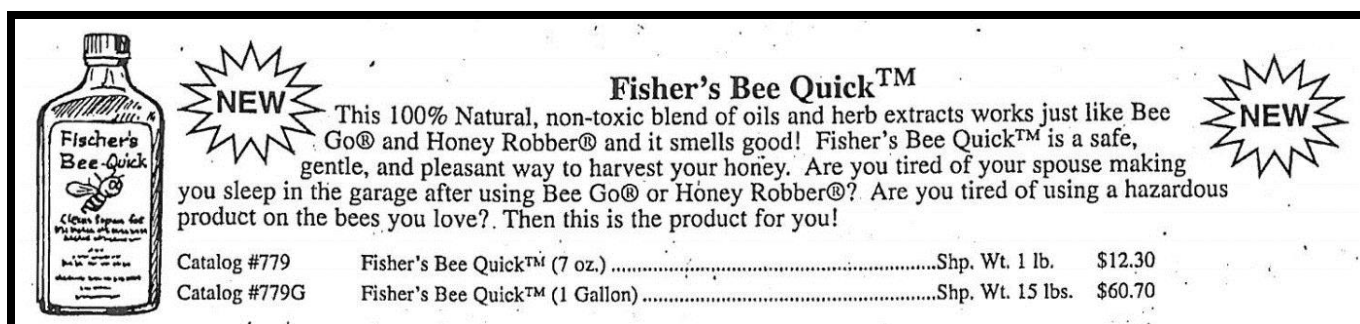


Below is the text as supplied by Plaintiff to Defendants in late 2001, including the Copyrighted Works at issue, in camera-ready format as a jpg image, replete with the metadata including CMI that was included in all images created by Plaintiff's image editing software.

This 100% Natural, non-toxic blend of oils and herb extracts works just like Bee Go® and Honey Robber® and it smells good! Fischer's Bee Quick™ is a safe, gentle, and pleasant way to harvest your honey. Are you tired of your spouse making you sleep in the garage after using Bee Go® or Honey Robber®? Are you tired of using a hazardous product on the bees you love? Then this is the product for you!

Below is the resulting 2002 print catalog entry.<sup>4</sup> The text was retyped by Defendants, to fit in the "NEW" starbursts. As an artifact of the verbatim retyping, Plaintiff's name was consistently misspelled as "Fisher" rather than "Fischer", but everything else, including the "TM"s and "(R)"s is reproduced verbatim. Note that Plaintiff's name is not misspelled in the sketch of the bottle.



**Fisher's Bee Quick™**

This 100% Natural, non-toxic blend of oils and herb extracts works just like Bee Go® and Honey Robber® and it smells good! Fisher's Bee Quick™ is a safe, gentle, and pleasant way to harvest your honey. Are you tired of your spouse making you sleep in the garage after using Bee Go® or Honey Robber®? Are you tired of using a hazardous product on the bees you love? Then this is the product for you!

Catalog #779	Fisher's Bee Quick™ (7 oz.)	Shp. Wt. 1 lb.	\$12.30
Catalog #779G	Fisher's Bee Quick™ (1 Gallon)	Shp. Wt. 15 lbs.	\$60.70

If Defendants had authored the text, and/or the four phrases/epigrams at issue here, then they would have used the same language on their website. They did not do so. See below:

Sandra Forrest Deposition:

Q. And so you worked with him to develop Brushy's first website?

A. That's correct.

Q. And would it be correct that in general terms it kind of mirrored the catalog?

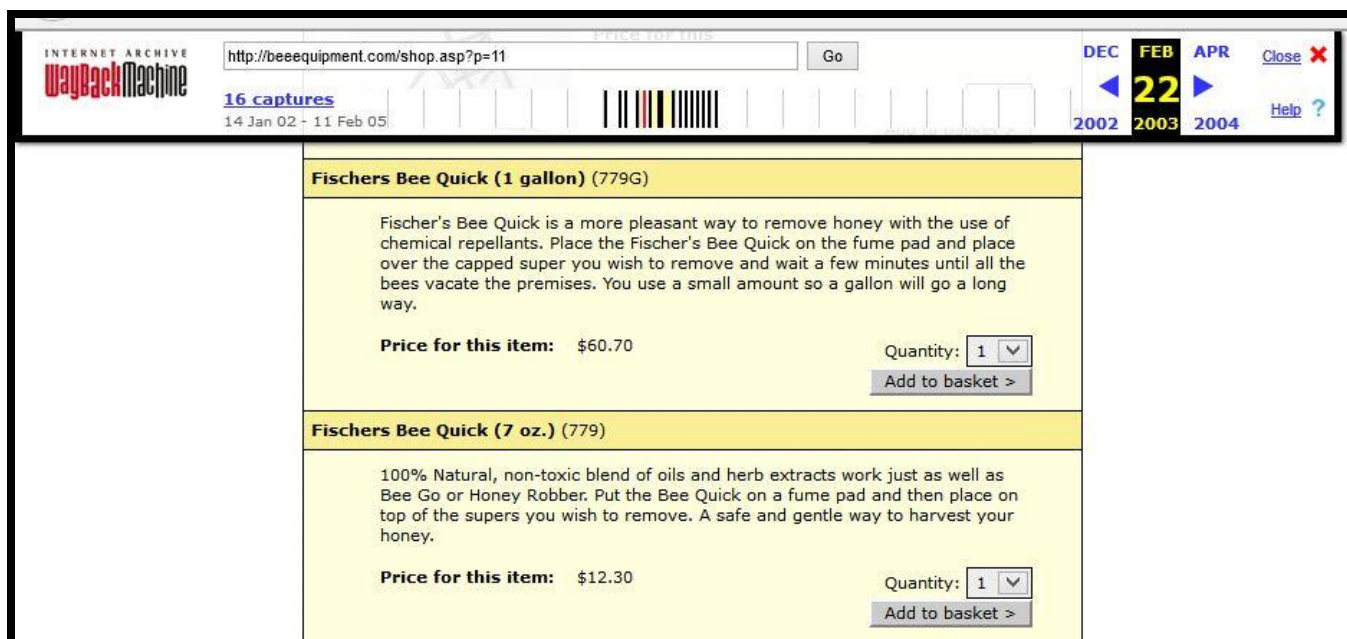
A. Yes. We attempted to do that.

Below is the 2002 website page for Bee-Quick, (a public record on Archive.org) which was clearly authored by Defendants. The style is typical of Defendants' product descriptions, in that it explains "how to use", rather than explaining "why you should buy". Their catalogs evince a similar lack of "marketing language" and "humor" throughout, and are clearly not the work of Plaintiff, who would be far more enthusiastic. Also note that on the website, the spelling of "Fischer" is correct.


<sup>4</sup> A motion to compel was required to get Defendants to supply any copies of any catalogs, and even then no catalog pages were produced from earlier than 2008, so 2002-2008 copies were supplied by Cornell University from their E. F. Phillips' Beekeeping Collection at the Mann Library.



Despite repeated letters from Plaintiff specifically asking them to use the same language on the website as the language he provided to them for the print catalog, Defendants wrote yet another description for the 1 Gallon jug of Bee-Quick, which they added in 2003, shown below.



The 2003 print catalog entry for Bee-Quick used the exact text Plaintiff had provided in late 2001, literally cutting and pasting the physical photo-print of the image into the paper layout of the Brushy Mountain catalog. The print catalog remained as below in 2004 and 2005.



**Fischer's Bee Quick™**

This 100% Natural, non-toxic blend of oils and herb extracts works just like Bee Go® and Honey Robber® and it smells good! Fischer's Bee Quick™ is a safe, gentle, and pleasant way to harvest your honey. Are you tired of your spouse making you sleep in the garage after using Bee Go® or Honey Robber®? Are you tired of using a hazardous product on the bees you love? Then this is the product for you!

Catalog #779	Fischer's Bee Quick™ (7 oz.) .....	Shp. Wt. 1 lb.	\$12.30
Catalog #779G	Fischer's Bee Quick™ (1 Gallon) .....	Shp. Wt. 15 lbs.	\$60.70

The website also remained unchanged during 2004 and 2005, and was not changed to match the print catalog until 2008:

INTERNET ARCHIVE  
Wayback Machine

http://www.beeequipment.com/shop.asp?p=14 Go

15 captures 20 Oct 01 - 11 Feb 05

AUG FEB 14 APR Close X Help ?

2002 2004 2005

**Fischers Bee Quick (7 oz.) (779)**

No Image Available

100% Natural, non-toxic blend of oils and herb extracts work just as well as Bee Go or Honey Robber. Put the Bee Quick on a fume pad and then place on top of the supers you wish to remove. A safe and gentle way to harvest your honey.

Price for this item: \$12.30

Quantity: 1

Add to basket >

INTERNET ARCHIVE  
Wayback Machine

http://beeequipment.com/shop.asp?p=14 Go

15 captures 20 Oct 01 - 11 Feb 05

DEC FEB 11 MAR Close X Help ?

2003 2005 2006

**Fischers Bee Quick (1 gallon) (779G)**

No Image Available

Fischer's Bee Quick is a more pleasant way to remove honey with the use of chemical repellants. Place the Fischer's Bee Quick on the fume pad and place over the capped super you wish to remove and wait a few minutes until all the bees vacate the premises. You use a small amount so a gallon will go a long way.

Price for this item: \$60.70

Quantity: 1

Add to basket >

**Winemaking (7794)**

No Image Available

(Anderson) Recipes, techniques, and tips for fresh fruits and concentrates. 284 pps.

Price for this item: \$21.95

Quantity: 1

Add to basket >

**Fischers Bee Quick (7 oz.) (779)**

No Image Available


100% Natural, non-toxic blend of oils and herb extracts work just as well as Bee Go or Honey Robber. Put the Bee Quick on a fume pad and then place on top of the supers you wish to remove. A safe and gentle way to harvest your honey.

Price for this item: \$12.75

Quantity: 1

Add to basket >

In 2006, the Print Catalog layout was changed to put a fume pad on the same page with the Bee-Quick. Plaintiff proposed, and the Forrests agreed to discount-bundle the products to encourage Bee-Quick sales to new users, who would not have a fume pad. The Bee-Quick sketch was moved to balance the page, the text was slid left, unchanged. Note that “Fisher’s” is again incorrectly typed to the left of the \$17.95 price for the bundled product.



### Fume Pad

Fume pads will remove more honey faster than any other method. One person can operate three pads at a time and can remove honey almost as fast as you can carry it. Given a little time the bees leave the honey supers and do not get as upset with these products as they do with brushes or blowers. Experience will enable you to master this method of honey removal. Basically you apply a small amount of whatever chemical you use to the pad and place it on top of the super you wish to remove. Wait time is determined by temperature.


Catalog #777 .....	Fume Pad Shp. Wt. 4 lbs.	\$9.00
Catalog #777F .....	Fume Pad and Fisher's Bee Quick...Shp. Wt. 5 lbs.	\$17.95

*Fischer's Bee Quick™ works fast and does not have a foul odor. Take advantage of our special offer on our Fume Pad and Fischer's Bee Quick™ combo.*

### Fischer's Bee Quick™

This 100% Natural, non-toxic blend of oils and herb extracts works just like Bee Go® and it smells good! Fischer's Bee Quick™ is a safe, gentle, and pleasant way to harvest your honey. Are you tired of your spouse making you sleep in the garage after using Bee Go®? Are you tired of using a hazardous product on the bees you love? Then this is the product for you!

Catalog #779	Fischer's Bee Quick™ (7 oz.) .....	Shp. Wt. 1 lb.	\$12.75
Catalog #779G	Fischer's Bee Quick™ (1 Gallon) .....	Shp. Wt. 15 lbs.	\$63.50

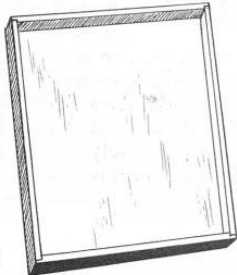




In 2008, Defendants used a photo of a bottle of Plaintiff's product, and they clearly used Plaintiff's photo provided to them prior to 2006. The photo shows the obsolete 7oz Bee-Quick "apothecary" bottle, replaced with an 8oz "bullet" bottle and pink pump-sprayer in early 2006. Defendants sold the last of their allocation of 7oz Bottles in fall 2005, so they would be very unlikely to have a 7oz bottle on hand to photograph in 2008. They eventually corrected the "7oz" to "8oz", but otherwise the print catalog layout, images, and text remained unchanged through 2010, continuing to use the image of the obsolete "apothecary" bottle.

### Fume Pad


Fume pads will remove more honey faster than any other method. One person can operate three pads at a time and can remove honey almost as fast as you can carry it. Given a little time the bees leave the honey supers and do not get as upset with these products as they do with brushes or blowers. Experience will enable you to master this method of honey removal. Basically you apply a small amount of whatever chemical you use to the pad and place it on top of the super you wish to remove. Wait time is determined by temperature.



Catalog # 777	Fume Pad.....	Shp. Wt. 4 lbs.	\$ 9.95
Catalog # 777F	Fume Pad and Fisher's Bee Quick.....	Shp. Wt. 5 lbs.	\$19.95

**Fischer's Bee Quick™ works fast and does not have a foul odor. Take advantage of our special offer on our Fume Pad and Fischer's Bee Quick™ combo.**


### Bee Go®



Bee Go® works remarkably well removing honey and doesn't upset the bees! One person alone can take off more honey than two people using a blower, which is why we do not sell blowers. When you put a fume pad on top of a super you will be amazed at how quickly the bees vacate the premises. This chemical makes a hard, hot job enjoyable. Bee Go® has a very, very bad odor and will run bees off capped honey but not brood. It will not leave this odor in your honey if you follow directions and remove immediately after it has worked. We also recommend storing your used fume pads away from anywhere you can smell them. This cannot be shipped by Air.

Catalog # 778	Bee Go® (1 pint).....	Shp. Wt. 4 lbs.	\$13.95
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### Fischer's Bee Quick™



This 100% Natural, non-toxic blend of oils and herb extracts works just like Bee Go® and it smells good! Fischer's Bee Quick™ is a safe, gentle, and pleasant way to harvest your honey. Are you tired of your spouse making you sleep in the garage after using Bee Go®? Are you tired of using a hazardous product on the bees you love? Then this is the product for you!

Catalog # 779	Fischer's Bee Quick™ (7 oz.)	Shp. Wt. 1 lb.....	\$12.95
Catalog # 779G	Fischer's Bee Quick™ (1 Gallon)	Shp. Wt. 15 lbs. ....	\$68.00